



PUBLIC NOTICE

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**COMMISSION OPENS INQUIRY ON
COMPETITIVE BIDDING PROCESS
FOR REPORT TO CONGRESS**
Docket No. WT 97-150

Comments Due August 1, 1997

I. Introduction and Background

The Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") added Section 309(j) to the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-713 (the "Communications Act"). Section 309(j) authorized the Commission to employ competitive bidding to choose from among mutually exclusive applications for initial licenses in services where the licensee receives compensation from subscribers. It requires the Commission to promote the development and rapid deployment of new technologies, products and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays. It further requires the Commission to promote opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.

In the four years since grant of auction authority, the Commission has completed fourteen auctions. These auctions have resulted in the assignment of over 4,300 licenses for spectrum-based services, which include narrowband Personal Communications Service (PCS), broadband PCS, Interactive Video Data Service (IVDS), Multipoint Distribution Service (MDS), 900 MHz Specialized Mobile Radio Service (SMR), unserved cellular areas, Direct Broadcast Satellite (DBS), Digital Audio Radio Service (DARS) and Wireless Communications Service (WCS). Auctions to date have raised a total of \$23.1 billion for the U.S. Treasury. Future auctions being planned include those for licenses to provide Local Multipoint Distribution Service, paging, narrowband PCS, and the 800 MHz SMR and 220 MHz services.

Section 309(j)(12) of the Communications Act requires that the Commission conduct a public inquiry regarding the use of competitive bidding to award licenses and submit a report to Congress by September 30, 1997. Pursuant to the statute, the report must:

- 1) contain a statement of the revenues obtained, and a projection of future revenues, from the use of competitive bidding systems;
- 2) describe the competitive bidding methodologies established by the Commission pursuant to Sections 309(j)(3) and (4) of the Communications Act;
- 3) compare the advantages and disadvantages of the competitive bidding methodologies established by the Commission in terms of attaining the objectives described in Sections 309(j)(3) and (4) of the Communications Act;
- 4) evaluate whether and to what extent:
 - (i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;
 - (ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;
 - (iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and
 - (iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and
- 5) recommend any statutory changes that are needed to improve the competitive bidding process.

To date, the Commission has conducted numerous rule makings implementing its auction authority. As a result, the agency has obtained comments and information from potential and actual bidders, industry groups and licensees concerning its auction process. By this Public Notice, the Commission seeks additional information and comment in order to assist in preparing its report to Congress. We encourage comment from participants in prior auctions, from persons or entities who are planning to participate in upcoming auctions, and from other interested parties, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Analysis of the data and results of specific auctions already conducted,¹ as well as information helpful in evaluating future auctions, is desirable. Parties are

¹ Further information about the Commission's auctions can be found at our Internet Auctions site, <http://www.fcc.gov/wtb/auctions.html>.

asked to provide any examples or detailed analyses, studies or statistics concerning the issues to be addressed in our report.

II. Request for Public Comment

A. Projection of revenues from the use of competitive bidding systems

To date, the Commission has raised \$23 billion for the U.S. Treasury through fourteen spectrum auctions. Revenue to be derived from future auctions will likely be affected by various factors, including the nature and amount of spectrum auctioned, service-specific Commission rules, market conditions, and auction methodology. Determining the value of spectrum in advance of an auction is very difficult. The value of spectrum depends on a number of factors, including its location, technical characteristics, the amount of spectrum, the geographic area covered, the availability of technology suitable for a given band, the amount of spectrum already available for provision of similar services, the number of incumbents presently occupying the spectrum, and whether incumbents, if any, will remain licensed in that spectrum or will be relocated to other spectrum. The Commission has not made estimates of the value of auctionable spectrum in the past. Moreover, our statutory authority specifically instructs the Commission not to base our spectrum allocation decisions "solely or predominantly" on the expectation of revenues that auctions may generate. Our primary mission in conducting auctions is promoting competition by awarding licenses rapidly to those who value them most highly.

We ask commenters to provide us with information that will aid the Commission in estimating projected revenues for its report to Congress. Specifically, we ask:

- How have the Commission's auction rules affected revenues in the first fourteen spectrum auctions? Please be specific.
- How and to what extent has the amount of spectrum being offered for auction, size of the license areas, the timing of the offerings, and the use for which the spectrum is allocated, affected revenues?
- What other factors have affected the revenues derived from the spectrum auctions conducted to date?
- What methodologies should the Commission use to project future revenues? Please provide specific illustrations of how such methodologies might be applied.

B. Comparison of different methodologies

The introduction of competitive bidding into the license assignment process promotes competition by awarding licenses quickly to those who value them most highly, reduces wasteful private expenditures on obtaining licenses in the secondary market, and raises revenue that lessens taxpayer burdens. Before the grant of auction authority, the Commission mainly relied upon comparative hearings and lotteries to select a single licensee from a pool of mutually exclusive applicants for a license. Under the comparative hearing process, the licensee was selected from among a group of applicants on the basis of certain criteria; under the lottery process, a licensee was selected at random. The Commission has found that spectrum auctions more effectively assign licenses than either comparative hearings or lotteries in most cases. For example, using comparative hearings and lotteries, it generally took the Commission at least two years or more to award licenses in each of the top cellular markets. Lotteries also had the effect of fueling speculation that resulted in the agency receiving nearly 400,000 applications for cellular licenses,² and of allowing license winners to reap large windfall profits by quickly selling their licenses in a private auction to others.³ By using auctions, the Commission has reduced the average time from license application to award to less than one year and the public is now receiving the direct financial benefit from the award of licenses.

Additionally, the FCC auction methodology promotes efficient spectrum use in several ways. First, it facilitates efficient spectrum aggregation across geographic areas and spectrum blocks. Second, it generates information about the value of spectrum for alternative uses. Moreover, auctions, unlike comparative hearings, can be conducted at modest cost relative to license value. The total cost of all FCC auctions to date has been approximately \$65 million, which represents only about 0.28 percent of the total auction revenue raised to date.

In conducting spectrum auctions, the Commission also has analyzed and experimented with various auction methodologies.⁴ We pioneered the use of simultaneous multiple round auctions, the format which we have used for most of our auctions. In contrast to other bidding mechanisms, simultaneous multiple round bidding generates the most information about license values during the course of the auction and provides bidders with the most flexibility to pursue spectrum aggregation strategies. Thus, this methodology effectively awards interdependent licenses to the bidders who value them most highly. Generally, the Commission has found that because of the superior information and flexibility simultaneous multiple round bidding provides, it is likely to yield more revenue than other auction designs. The Commission also has used oral

² See Congressional Budget Office, *Where Do We Go From Here? The FCC Auctions and the Future of Radio Spectrum Management*, at 5 (1997) ("CBO Study"). Notably, between 1983 and 1993 over 75 percent of all cellular licenses had been transferred at least once.

³ *Id.* at p. x.

⁴ See Implementation of Section 309(j) of the Communications Act--Competitive Bidding, PP Docket No. 93-253, *Second Report and Order*, 9 FCC Rcd 2348 (1994).

outcry and sequential multiple round electronic auction designs, and is exploring other bidding mechanisms, such as combinatorial bidding, for future auctions.⁵ We ask commenters to consider the different methodologies used to date and offer any views or comparisons of these mechanisms that would be helpful for the Commission's report to Congress. In particular, we ask:

- Are there specific examples of where the simultaneous multiple round auction methodology has facilitated efficient aggregation of complementary licenses?
- What costs have been incurred in the preparation of bids? Have these costs been significantly affected by the duration of the auctions? How do these costs compare to the costs associated with lotteries and comparative hearings?
- How has the use in connection with auctions of electronic application filing, electronic bidding, and the distribution of information via the Internet improved the efficiency and effectiveness of granting spectrum licenses?
- Are there any other auction methodologies or improvements to existing methodologies that might be explored?

C. Evaluation of how competitive bidding has facilitated the introduction of new technologies and the entry of new companies into the telecommunications market

The PCS spectrum auctions resulted in the creation of many new wireless telecommunications companies.⁶ Counted among these companies are many small entrepreneurial firms. Indeed, 54 percent of the licenses thus far awarded by auctions have gone to small businesses, many of which are new entrants in the telecommunications market. Also, several of the largest telecommunications enterprises in the world, such as Sprint Telecommunications and the Bell Operating Companies, have formed alliances to establish nationwide PCS networks.⁷ For subscribers, these new firms represent new choices for increasingly improving wireless service at lower prices. A recent report identifies over 40 markets that now have three wireless competitors and 10 markets with four competitors. There have been some reports that pricing in competitive markets with at least one PCS operator averages 18 percent lower than in markets with no PCS

⁵ See Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, FCC 97-60 (rel. February 28, 1997) ¶ 79-97 ("*Part 1 NPRM*").

⁶ Thomas J. Duesterberg & Peter K. Pitch, *Wireless Services, Spectrum Auctions, and Competition in Modern Telecommunications*, OUTLOOK, May 1997, at 6.

⁷ CBO Study at 20.

competitors.⁸ Competition is also increasing consumers' choice of products by advancing the development of three digital standards. In monetary terms, the most important effect to the economy is that these firms are now investing in infrastructure that will permit them to offer telecommunications services in competition with each other and with other providers such as cable and telephone companies. The wireless investment is expected to be in the area of \$50 billion over the next five years--the largest single non-military investment in a new technology in history.

By substantially lessening the length of the license assignment process, auctions have resulted in speeding new technologies and services to the wireless communications marketplace. For example, we recently completed the Digital Audio Radio Service auction, which will bring a new digital radio service to American listeners nationwide. Other services that have been rapidly developed through auctions include narrowband PCS, Direct Broadcast Satellite, Multipoint Distribution Service, and Specialized Mobile Radio. For our report, we ask:

- How do spectrum auctions compare with previous assignment methods in attracting new entities to the communications market? How successful have new entrants been in winning licenses at auction? What effect are new entities having on the availability to the public of competitive communications offerings?
- What are specific examples of new and innovative service offerings or technologies that have been made available to the public rapidly because of auctions?
- Has the auction process or the timing of auctions adversely affected the introduction of new technologies in any way? If so, what changes could we make in our auctions process to better facilitate new technologies?

D. Evaluation of how competitive bidding methodologies have secured prompt delivery of service to rural areas

For broadband PCS, we adopted measures that would facilitate the delivery of new services to rural and underserved areas. In that proceeding, rural telephone companies were concerned that they effectively would be barred from entering the broadband PCS industry if they were required to bid on an entire Basic Trading Area (BTA) or Major Trading Area (MTA)

⁸ See Yankee Group, *Yankee Watch Mobile Flash - Competition Begins to Have an Impact on Wireless Pricing* (April 18, 1997).

license to obtain the license which covered their wireline service areas.⁹ They believed that partitioning would allow them to serve areas in which they already provide service, encouraging them to take advantage of existing infrastructure in providing PCS services and thereby speeding service to rural areas. In response to their concerns, the Commission adopted measures allowing rural telephone companies to obtain broadband PCS licenses that are geographically partitioned from larger PCS service areas, as well as to obtain disaggregation of a portion of the spectrum assigned to the licensee. In the *Partitioning and Disaggregation Order*, the Commission extended its PCS partitioning and disaggregation rules to allow entities other than rural telephone companies to obtain partitioned or disaggregated licenses in order to speed service to unserved or underserved areas.¹⁰ The benefits of these rules are demonstrated in a partitioning agreement recently approved in which a large licensee partitioned a geographic portion of its MTA to a rural telephone company, thereby increasing the rural telephone company's footprint and giving it access to several key interstate arteries.¹¹

We have adopted or proposed partitioning and disaggregation rules for other services, such as narrowband PCS, 220 MHz, paging, and LMDS.¹² To identify other ways our rules

⁹ See generally, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532 (1994).

¹⁰ Partitioning is the assignment of geographic portions of a spectrum license along geopolitical or other boundaries. Disaggregation is the assignment of discrete portions or "blocks" of spectrum licenses to another qualifying entity. See Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Licensees, WT Docket No. 96-148, FCC 96-474, *Report and Order and Further Notice of Proposed Rulemaking*, 62 Fed. Reg. 696 (rel. Dec. 20, 1996).

¹¹ See Wireless Telecommunications Bureau Commercial Wireless Information Report No. LB-97-23, *Public Notice* (rel. Mar. 7, 1997).

¹² See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, GEN Docket No. 90-314, ET Docket No. 92-100, Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Narrowband PCS, PP Docket No. 93-253, FCC 97-140, *Report and Order and Further Notice of Proposed Rulemaking* (rel. April 23, 1997), ¶¶ 96-99.

have facilitated delivery to underserved areas, we ask commenters to address the following questions:

- How have the Commission's competitive bidding rules facilitated delivery of new and competitive telecommunications services to rural and/or underserved areas?
- What effect have the Commission's rules on geographic service area size and the size of spectrum blocks had on delivery of new technologies and services to rural and/or underserved areas?
- How well have service-specific performance requirements, including build-out requirements, ensured the prompt delivery of new and competitive service to rural and/or underserved areas?
- What effect have the Commission's policies on geographic partitioning and spectrum disaggregation had on improving opportunities for delivery of new technologies and services to rural and/or underserved areas?

E. Evaluation of how the Commission's competitive bidding rules ensure that small businesses, rural telephone companies and businesses owned by women and members of minority groups have been able to participate successfully in the competitive bidding process

In prescribing competitive bidding regulations, Congress directed the Commission to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. 47 U.S.C. § 309(j)(4)(D). To promote these objectives, Section 309(j)(4)(A) requires the Commission "to consider . . . alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods." The Commission has adopted a number of measures, including entrepreneurs' blocks, bidding credits, reduced upfront payments and down payments, and installment payments, to ensure the participation of rural telephone companies and small businesses, including those owned by women and minorities.

Since the 1993 mandate to ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, Congressional and Supreme Court actions have narrowed our options for fulfilling this mandate. In 1994, Congress repealed Section 1071 of the Communications Act, voiding the Commission's tax certificate program.¹³ In 1995, the

¹³ H.R. 831, 104th Cong. 1st Sess. § 2.

Supreme Court held in *Adarand Constructors, Inc. v. Peña* that "all racial classifications . . . must be analyzed by a reviewing court under strict scrutiny."¹⁴ The Court ruled that any federal program that makes distinctions on the basis of race must serve a compelling governmental interest and must be narrowly tailored to serve that interest. In 1996, the Supreme Court held in *United States v. Virginia* that a state program that makes distinctions on the basis of gender must be supported by an "exceeding persuasive justification" in order to withstand constitutional scrutiny.¹⁵ Because the record developed in promulgating rules to promote Section 309(j)'s objectives did not assume application of a "strict scrutiny test," the Commission narrowed the provisions for minority- and women-owned businesses to provisions benefiting small businesses. The Commission believes that these measures have allowed small businesses, including those owned by women and minorities, to overcome barriers that have impeded these groups' participation in the telecommunications arena, including barriers related to access to capital. The Commission continues to encourage the participation of a variety of entrepreneurs in the provision of wireless services, believing that innovation by small businesses will result in a diversity of service offerings that will increase customer choice and promote competition. Additionally, we have initiated a proceeding to consider other ways to improve the access of small businesses, minority- and women-owned firms to the telecommunications markets.¹⁶ We recently issued a report pursuant to this proceeding which discusses the numerous measures the Commission has implemented to benefit small businesses, such as the use of service-specific definitions of small businesses, the outreach efforts by the FCC Office of Public Affairs and Office of Communications Business Opportunities, and the establishment of the Telecommunications Development Fund (TDF).¹⁷ We also are commencing a comprehensive study to further examine the role of small businesses and businesses owned by minorities or women in the telecommunications industry and the impact of our policies on access to the industry for such businesses. This study will assist us in determining whether there are constitutionally sound bases for adopting licensing provisions to promote opportunities for women and minorities.

Our experience in conducting auctions has demonstrated that small businesses, as well as minority- and women-owned businesses, have benefited from our competitive bidding procedures. Of the over 4,300 licenses awarded thus far by auctions, 54 percent were awarded to small businesses; 11 percent to minority-owned businesses; 11 percent to women-owned businesses; 10

¹⁴ 115 S. Ct. 2097, 2113 (1995).

¹⁵ 116 S. Ct. 2264, 2274-76 (1996).

¹⁶ See Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, *Report*, GN Docket No. 96-113, FCC 97-164 (rel. May 8, 1997).

¹⁷ See 47 U.S.C. § 614. Congress created the TDF through the Telecommunications Act of 1996 to promote access to capital for small businesses in the telecommunications industry.

percent to women-owned small businesses; 4 percent to minority women-owned businesses; and 5 percent to rural telephone companies.¹⁸

We request that commenters assess the provisions the Commission has adopted to meet its statutory directive. Specifically, we ask:

- How have the Commission's ownership policies (*e.g.*, attribution rules and spectrum caps), eligibility restrictions (*e.g.*, entrepreneurs' blocks) and favorable payment terms (*e.g.*, bidding credits, reduced upfront and down payments, and installment payment plans) affected the ability of small businesses, rural telephone companies and businesses owned by women and members of minority groups ("designated entities") to participate successfully in the competitive bidding process? In particular, have these provisions provided significant opportunities for rural telephone companies?
- What specific financial incentives have been beneficial to small businesses? Should these provisions be altered in any manner? What, if any, policies could the Commission adopt to guard against defaults by bidders and licensees? Are installment payment plans essential to attracting new entrants to participate in the auctions? Do the problems presented by the administration of such plans and by the potential for licensee default detract from the efficient award of licenses?
- What should be the Commission's role in the management of the Commission's installment loan portfolio? Should post-licensing issues relating to the satisfaction of installment obligations be transferred to another government agency with the appropriate expertise?
- Have designated entity provisions and other rules (*e.g.*, spectrum caps) served the statutory objective of wide dissemination of licenses?
- Following the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña* the Commission revised its auction rules to make them race- and gender-neutral. What has been the impact of this on the opportunities of businesses owned by women and minorities to participate in the provision of spectrum-based services?

¹⁸ Note that a licensee may fall into more than one category.

III. Recommendation of any policy and statutory changes

We also invite commenters to recommend specific actions the Commission should take to improve the competitive bidding rules and procedures in order to fulfill the objectives of Section 309(j). We note that the Commission is currently considering proposals to revise and improve the general competitive bidding rules and procedures contained in Subpart Q of Part 1 of the Commission's Rules.¹⁹ Commenters are further requested to offer recommendations on any statutory or procedural changes that would improve the licensing processes following an auction.

IV. Procedural Matters

Comments must be submitted by August 1, 1997. All comments should be filed with the Acting Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554. Copies must be provided to Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, N.W., Room 5322, Washington, D.C. 20554. Comments should reference Docket No. WT 97-150.

Copies of the comments may be obtained from the Commission's duplicating contractor: International Transcription Service, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3500. Copies will also be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C.

For further information, please contact Mark Bollinger or Alice Elder, Auctions Division, Wireless Telecommunications Bureau, at (202) 418-0660.

Action by the Commission.

¹⁹ See Part 1 NPRM.